

## **BILL ANALYSIS**

Senate Research Center

H.B. 1541  
By: Callegari (Lindsay)  
Natural Resources  
7/25/2003  
Enrolled

### **DIGEST AND PURPOSE**

The Texas Constitution provides for the establishment of various general law water districts. The Water Code governs such districts. Amendment of the Water Code facilitates more efficient operation of these districts. H.B. 1541 amends Chapter 43 (provisions applicable to all districts), Chapter 54 (municipal utility districts), Chapter 51 (water control and improvement districts) and Chapter 57 (levee improvement districts).

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 388.005(a), Health and Safety Code, as follows:

- (a) Redefines "political subdivision."

SECTION 2. Amends Section 43.0751 (a) (3), Local Government Code, to redefine "strategic partnership agreement."

SECTION 3. Amends Sections 43.0751, Local Government Code, by amending Subsections (d), (f), and (i) and adding Subsection (q), as follows:

- (d) Deletes existing text authorizing a municipality to combine the public hearings and notices required by this subsection with the public hearings and notices required by Section 43.124.
- (f) Authorizes a strategic partnership agreement to provide for certain annexations, payments by the municipality, conversion of district, agreements, and other lawful terms that the parties consider appropriate. Deletes existing text relating to the required specifications of a full-purpose annexation provision.

(i) Provides that a strategic partnership agreement may provide that the district shall not incur additional debt, liabilities, or obligations, to construct additional utility facilities, or sell or otherwise transfer property without prior approval of the municipality. Deletes text regarding a district that is negotiating for or that has adopted a strategic partnership agreement. Deletes text regarding approval not being unreasonably withheld or delayed. Deletes text regarding an action taken in violation of this subsection being void.

(q) Provides that Subchapter F does not apply to a limited-purpose annexation under a strategic partnership agreement.

**SECTION 4.** Amends Section 43.123, Local Government Code, by adding Subsection (e), to provide that the deadline imposed by Subsection (d) (2) does not apply to an area that meets certain criteria.

**SECTION 5.** Amends Section 43.127(a), Local Government Code, to require the municipality, except as provided by Section 43.123(e), on or before the date prescribed by the regulatory plan under Section 43.123 (d) (2), the municipality, to annex the area for full purposes.

**SECTION 6.** Amends Section 49.052, Water Code, by adding Subsections (h) and (i), as follows:

(h) Provides that this subsection applies only to a district that is located wholly within the boundaries of a municipality with a population of more than 1.5 million, that is governed by Chapter 375 (Municipal Management Districts in General), Local Government Code, and that is governed by an appointed board consisting of nine or more members. Provides that notwithstanding Subsection (f) or (g), a person is considered to have resigned from serving as a member of the governing body of a district (board) if the person fails to attend three consecutive meetings of the board. Authorizes the remaining board members by majority vote to waive the resignation under this subsection if fairness requires that the absences be excused on the basis of illness or other good cause.

(i) Provides that notwithstanding any other law, a director is eligible to serve on the board of a district governed by Chapter 375, Local Government Code, regardless of the municipality in which the director resides, if the district is located within the boundaries of a municipality with a population of more than 1.8 million and all or part of the district is located more than five miles from the downtown city hall of that municipality.

**SECTION 7.** Amends Section 49.067, Water Code, as follows:

(a) Subsection created from existing text.

(b) Requires a contract for technical, scientific, legal, fiscal, or other professional services, notwithstanding other law, to be approved by the board unless specifically delegated by board action. Provides that the terms and conditions of such a contract, including the terms

for payment, are subject to the decision of the board unless specifically delegated by board action. Provides that the board through such action cannot abrogate its fiscal responsibility.

**SECTION 8. Amends Section 49.068, Water Code, as follows:**

**Sec. 49.068. CONTRACTS WITH GOVERNMENTAL AGENCIES.** (a) Subsection created from existing text.

(b) Authorizes a municipality, notwithstanding the provisions of other law or a home-rule municipal charter, to contract with a district. Authorizes the term of a contract under this subsection to be of unlimited duration.

**SECTION 9. Amends Section 49.103, Water Code, by adding Subsection (h), as follows:**

(h) Authorizes the secretary of the board or the secretary's designee, if authorized by the board in the proceedings calling a director election, on receipt of the certification required by Section 2.052(b) (Certification of Unopposed Status), Election Code, to post notice that the election is not to be held. Requires the notice to be posted, on or before the commencement of early voting, at each polling place that would have been used in the election. Provides that if the notice is timely posted the board or the board's designee is not required to post or publish notice of the election, prepare or print ballots and election materials, or hold early and regular voting, and requires the board to meet at the earliest practicable time to declare each unopposed candidate elected to office.

**SECTION 10. Amends Section 49.106(a), Water Code, to provide that the engineer's report is not part of the proposition or propositions to be voted on or a contract with the voters.**

**SECTION 11. Amends Sections 49.153(a) and (e), Water Code, as follows:**

(a) Authorizes the board, without the necessity of an election, to borrow money on negotiable or nonnegotiable notes of the district to be paid solely from the revenues derived from the ownership of all or any designated part of the district's works, plants, improvements, facilities, or equipment after deduction of the reasonable cost of maintaining and operating the facilities.

(e) Provides that Subsection (c) does not apply to a note issued to and approved by certain entities or a district described by Section 49.181(h).

**SECTION 12. Amends Section 49.181(a), Water Code, to provide that this section does not apply to certain bonds under certain conditions.**

**SECTION 13. Amends Sections 49.183(a) and (b), Water Code, as follows:**

(a) Requires bonds issued by a district, except for refunding bonds, or bonds sold to a state or federal agency or to the North American Development Bank, to be sold after advertising for and receiving competitive sealed bids and to be awarded to the bidder whose bid produces the lowest net effective interest rate to the district.

(b) Makes a conforming change.

SECTION 14. Amends Section 49.194, Water Code, by adding Subsection (g), to authorize a submission to the executive director required by this section to be made electronically.

SECTION 15. Amends Subchapter H, Chapter 49, Water Code, by adding Section 49.2125, as follows:

**Sec. 49.2125. FEES AND OTHER CHARGES OF CERTAIN REGIONAL WATER AUTHORITIES AFTER ANNEXATION.** (a) Provides that this section applies to certain regional water authorities.

(b) Provides that notwithstanding any other law, except to the extent an authority to which this section applies agrees in writing, a municipality's annexation of territory within the authority has no effect on the authority's ability to assess and collect inside the territory annexed by the municipality the types of fees, rates, charges, or special assessments that the authority was assessing and collecting at the time the municipality initiated the annexation; provided however, that the authority's ability to assess and collect such fees, rates, charges, or special assessments shall terminate on the later to occur of two certain dates. Requires an authority to which this section applies to continue to provide services to the annexed territory in accordance with contracts in effect at the time of the annexation unless a written agreement between the governing body of the authority and the governing body of the municipality provides otherwise.

SECTION 16. Amends Sections 49.226(a), (c), and (d), Water Code, as follows:

(a) Authorizes the board, in connection with the sale of surplus land, at its discretion, to impose restrictions on the development and use of the land.

(c) Deletes existing text relating to the private sale of property.

(d) Requires the proceeds of the sale of property originally acquired with bond proceeds, if the district has outstanding bonds secured by a pledge of tax revenues, to be applied to retire outstanding bonds of the district or held and treated as surplus bond proceeds and spent only as provided by the rules of the Texas Commission on Environmental Quality (TCEQ) relating to surplus bond proceeds.

SECTION 17. Amends Section 49.234(a), Water Code, as added by Section 15, Chapter 1423, Acts of the 77th Legislature, Regular Session, 2001, to prohibit a district or corporation that has not received funding under Subchapter K, Chapter 17, from requiring a property owner who has installed an on-site wastewater holding or treatment facility before the adoption of the rule to connect to the district's or corporation's wastewater collection system.

SECTION 18. Amends Subchapter H, Chapter 49, Water Code, by adding Section 49.236, as follows:

Sec. 49.236. NOTICE OF TAX HEARING. (a) Requires the board, before the board adopts an ad valorem tax rate for the district for debt service, operation and maintenance purposes, or contract purposes, to give notice of each meeting of the board at which the adoption of a tax rate will be considered. Requires the notice to contain a certain statement and certain information.

(b) Requires notice of the hearing to be published in a certain manner and mailed to certain certain persons.

SECTION 19. Amends Section 49.271, Water Code, by adding Subsection (e), to authorize a district contract for construction work to include economic incentives for early completion of the work or economic disincentives for late completion of the work.

SECTION 20. Amends Section 49.273, Water Code, by adding Subsection (l), to provide that the board is not required to advertise or seek competitive bids for security or surveillance systems or components of or additions to district facilities relating to security or surveillance, including systems used for the prevention of terrorist or criminal acts and incidents or acts of war, if the board finds that doing so would compromise the safety and security of district facilities or residents.

SECTION 21. Amends Section 49.278(a), Water Code, to add contracts for the purchase of electricity for use by the district to the list of items and contracts to which this subchapter does not apply.

SECTION 22. Amends Section 49.303, Water Code, as follows:

Sec. 49.303. New heading: EXCLUDING LAND OR OTHER PROPERTY FROM DISTRICT. (a) Authorizes a district to exclude land or other property from the district under this subchapter if the district has no outstanding bonds payable in whole or in part from taxes.

(b) Authorizes the board, if a district has no outstanding, rather than before a district orders an election for the authorization of, bonds payable in whole or in part from taxes, to, on its own motion, call a hearing on the question of the exclusion of

land or other property from the district under the provisions of this subchapter, rather than section and Sections 49.304 through 49.307, if the exclusions are practicable, just, or desirable. Deletes existing Subsection (b) relating to requiring the board to call a hearing on the exclusion of land or other property from the district on the written petition of any landowner or property owner in the district filed with the secretary of the board before the first election on the question of whether bonds should be issued payable in whole or in part from taxes is ordered.

(c) Authorizes the board, if a district has no outstanding bonds payable in whole or in part from taxes, to hold a hearing on the exclusion of land or other property from the district if a landowner or property owner submits a signed petition to the secretary of the board evidencing the consent of the owners of a majority of the acreage proposed to be excluded and a majority of the taxable property in the district, as reflected by the most recent certified tax roll of the district. Deletes existing text relating to authorizing the board hold a hearing on the exclusion of land or other property from the district if the district has not issued bonds payable in whole or in part from taxes.

(d) Prohibits a district that has previously held an election at which approval was given for the issuance of bonds payable in whole or in part from taxes from relying on that election for the issuance of the bonds if after the bond election, but before the bonds are issued, land or other property is excluded from the district as provided by this subchapter. Requires the board to call and hold another bond election and receive voter approval, rather than receive voter approval as provided by this subchapter, before issuing those bonds.

(e) Prohibits a district from excluding land or other property from the district under this section if the district has issued bonds payable in whole or in part from taxes and those bonds are outstanding.

**SECTION 23.** Amends Section 49.304(a), Water Code, to require the board, if the board determines that an exclusion hearing should be held as provided by Section 49.303, rather than as provided by Section 49.303(a) or (c), or if a written petition requesting an exclusion hearing is filed with the secretary of the board as provided by Section 49.303(b), to give notice of the time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to receive petitions for exclusion of land or other property.

**SECTION 24.** Amends Sections 49.351(a), (k), and (l), Water Code, as follows:

(a) Authorizes a district providing potable water or sewer service to household users may establish, operate, and maintain a fire department to perform all fire-fighting services, rather than activities, within the district as provided in this subchapter and may issue bonds or impose a mandatory fee, with voter approval, for financing a plan approved in

accordance with this section, including the construction and purchase of necessary buildings, facilities, land, and equipment and the provision of an adequate water supply.

(k) Defines "fire-fighting services," rather than "fire-fighting activities."

(l) Makes a conforming change.

SECTION 25. Amends Section 49.455(d), Water Code, to require the information form required by this section to be filed with the county clerk within 48 hours after the district is officially created, rather than within 48 hours after the effective date of this section or within 48 hours after the district is officially created, whichever time comes first.

SECTION 26. Amends Section 53.029, Water Code, by adding Subsection (e), as follows:

(e) Authorizes a district that has adopted the rights, authority, privileges, and functions of a road district in the manner provided under Subsection (c) to, following approval of a construction contract by the district's governing body, reimburse expenditures as provided by Sections 257.003(a) and (b), Transportation Code, without any additional approval under Section 257.003, Transportation Code.

SECTION 27. Amends Section 54.201(b), Water Code, to authorize a district to purchase, construct, acquire, own, operate, maintain, repair, improve, or extend inside and outside its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary to accomplish the purposes of the district authorized by the constitution, this code, or other law, rather than its creation, including all works, improvements, facilities, plants, equipment, and appliances incident, helpful, or necessary for certain actions.

SECTION 28. Amends Subchapter D, Chapter 54, Water Code, by adding Section 54.2052, as follows:

Sec. 54.2052. PLUMBING CODE. Provides that notwithstanding any other law, a district is not required to adopt a plumbing code. Authorizes a district to adopt and enforce one or more plumbing codes meeting the standards and requirements of the rules and laws of this state and to amend any code adopted to conform to local concerns if the amendment does not substantially vary from rules or laws of this state. Provides that if a municipal regulation conflicts with a district regulation, the municipal regulation prevails.

SECTION 29. Amends Section 54.234, Water Code, to authorize any district, which has the power to levy taxes, to petition TCEQ, rather than petition the Texas Transportation Commission with the approval of TCEQ, to acquire the powers granted to road utility districts operating pursuant to Chapter 441, Transportation Code, under the authority of Article III, Section 52, Texas Constitution. Requires TCEQ, as soon as practicable after such petition has been filed with TCEQ, to issue an order either approving or denying such petition. Provides that in the event of any

conflict between the provisions of the Water Code and the general laws of this state applicable to the district and the provisions of Chapter 441, Transportation Code, the provisions of the Water Code and the general laws of this state applicable to the district shall prevail. Deletes existing text relating to requiring the Texas Transportation Commission to conduct a hearing in accordance with Chapter 441, Transportation Code, and in accordance with Chapter 441, Transportation Code. Deletes existing text relating to requiring any district so petitioning the Texas Transportation Commission to conform to the rules applicable to the creation and administration of such districts as provided by Chapter 441, Transportation Code.

**SECTION 30.** Amends Section 54.503, Water Code, as follows:

Sec. 54.503. **MANNER OF REPAYMENT OF BONDS.** Authorizes the board to provide for the payment of principal of and interest and redemption price on the bonds in a certain manner.

**SECTION 31.** Amends Section 54.505, Water Code, as follows:

Sec. 54.505. **ELECTION ON TAX BONDS.** Authorizes bonds payable solely from revenues to be issued by resolution or order of the board without an election, but requires no bonds, except refunding bonds, payable wholly or partially from ad valorem taxes to be issued until authorized by a majority vote of the resident electors of the district voting in an election called and held for that purpose. Provides that an election is not required to pledge revenues to the payment of bonds.

**SECTION 32.** Amends Sections 54.739 and 54.744, Water Code, as follows:

Sec. 54.739. New heading: **SUBSTITUTING LAND OF EQUAL VALUE.** Provides that after the district is organized and acquires facilities with which to function for the purposes for which it was organized, and votes, issues and sells bonds for such purposes, land within the district boundaries subject to taxation that does not need or utilize the services of the district may be excluded and other land not within the boundaries of the district may be included within the boundaries of the district without impairment of the security for this section, rather than the provisions of this section, and Sections 54.740 through 54.747, rather than Sections 54.741 through 54.748 subject to commission approval.

Sec. 54.744. **IMPAIRMENT OF SECURITY.** Requires the lands proposed for inclusion, for purposes of the board's consideration of the applications, to be deemed to be sufficient to avoid an impairment of the security for payment of obligations of the district if certain conditions apply.

**SECTION 33.** Amends Subchapter H, Chapter 54, Water Code, by adding Sections 54.748 and 54.749, as follows:



**Sec. 54.748. EXCLUSION OF LAND FOR FAILURE TO PROVIDE SUFFICIENT SERVICES; BONDS OUTSTANDING.** (a) Provides that this section applies only to a district that has a total area of more than 5,000 acres.

(b) Requires the board to call a hearing on the exclusion of land from the district on a written petition filed with the secretary of the board by a landowner whose land has been included in and taxable by the district for more than 28 years if any bonds issued by the district payable in whole or in part from taxes of the district are outstanding and the petition meets certain requirements.

(c) Authorizes the board to exclude land under this section only on finding that the district has never provided utility services to the land described by the petition, the district has imposed a tax on the land for more than 28 years, all taxes the district has levied and assessed against the land and all fees and assessments the district has imposed against the land or the owner that are due and payable on or before the date of the petition are fully paid, and the executive director has reviewed the economic impact of the proposed exclusion of land and does not oppose the exclusion.

(d) Authorizes the board, if evidence presented at the hearing conclusively demonstrates that the requirements and grounds for exclusion described by Subsections (b) and (c) have been met, to enter an order excluding the land from the district. Requires the board, if the board enters an order excluding the land, to redefine in the order the boundaries of the district to embrace all land not excluded.

(e) Requires a copy of an order excluding land and redefining the boundaries of the district to be filed in the deed records of the county in which the district is located.

(f) Provides that the exclusion of land under this section does not impair the rights of holders of any outstanding bonds, warrants, or other certificates of indebtedness of the district.

(g) Authorizes the district, after any land is excluded under this section, to issue any unissued additional debt approved by the voters of the district before exclusion of the land under this section without holding a new election. Prohibits additional debt issued after land is excluded from the district from being payable from and does not create a lien against the taxable value of the excluded land.

(h) Defines "land."

**Sec. 54.749. TAX LIABILITY OF EXCLUDED LAND; BONDS OUTSTANDING.** (a) Provides that land excluded from the district under Section 54.748 that is pledged as security for any outstanding debt of the district remains pledged for its pro rata share of the debt until final payment is made. Requires the district to continue to levy and collect taxes

on the excluded land at the same rate levied on land remaining in the district until the amount of taxes collected from the excluded land equals the land's pro rata share of the district's debt outstanding at the time the land was excluded from the district.

(b) Requires the district to apply the taxes collected on the excluded land only to the payment of the excluded land's pro rata share of the debt.

SECTION 34. Amends Section 57.015(b), Water Code, to require the notice to be posted at the courthouse door and at a place, rather than four different places, inside the proposed district. Makes a conforming change.

SECTION 35. Amends Section 57.092(a), Water Code, to authorize the district to enter into all necessary and proper contracts and employ all persons and means necessary to purchase, acquire, build, construct, complete, carry out, maintain, protect, and, in case of necessity, add to and rebuild all works and improvements necessary or proper to fully accomplish the purposes of the district, including the reclamation of land within the district, rather than to fully accomplish a reclamation plan lawfully adopted for the district.

SECTION 36. Amends Section 57.104, Water Code, as follows:

Sec. 57.104. New heading: **CONSTRUCTION OF IMPROVEMENTS**. Authorizes, rather than requires, the district to construct all improvements necessary or convenient to accomplish the purposes of the district, rather than all improvements included in the plan of reclamation approved by TCEQ.

SECTION 37. Amends Section 57.108(b), Water Code, to delete existing text relating to requiring the district to comply with Section 57.104 as funds are available.

SECTION 38. Amends the heading to Section 57.116, Water Code, to read as follows:

Sec. 57.116. **ENGINEER'S CONSTRUCTION REPORT**.

SECTION 39. Amends Section 57.116(a), Water Code, to require the engineer, as work progresses on the district's improvements, rather than as the work on the plan of reclamation progresses, the engineer to make a report to the board, showing in detail whether or not the contract is being fulfilled.

SECTION 40. Amends Section 57.117(b), Water Code, to require the executive director, if the executive director finds that the work has not been done in strict accordance with the contract, to officially certify this fact, and in the certificate state where the contractor has failed to comply with the contract, rather than the approved plan of reclamation.

SECTION 41. Amends Section 57.118, Water Code, to make conforming changes.

SECTION 42. Amends the heading to Subchapter E, Chapter 57, Water Code, to read as follows:

**SUBCHAPTER E. ENGINEER'S REPORT**

SECTION 43. Amends Sections 57.177(a) and (c), Water Code, as follows:

(a) Authorizes the board, if the district wants to carry out its purposes, rather than plan of reclamation, without issuing bonds, to arrange for contributions from landowners or other sources to provide the funds required to complete the improvements.

(c) Prohibits the indebtedness, if the district creates an indebtedness under this section, from being more than a certain amount.

SECTION 44. Amends Section 57.208(b), Water Code, to delete existing text relating to requiring certain bonds to state on their face the purpose for which they are issued.

SECTION 45. Amends Section 57.216, Water Code, as follows:

(a) Makes conforming changes.

(b) Deletes existing text relating to requiring the new or amended plan of reclamation to be approved by TCEQ.

SECTION 46. Amends Section 57.260(a), Water Code, to require the commissioners court of each county in which any portion of that district is located, if a district levies taxes on the benefit basis, to levy and have assessed and collected taxes on all taxable property inside the district, based on the net benefits which the commissioners of appraisal find will accrue to each piece of property from the improvements described in the engineer's report, rather than completion of the plan of reclamation, or other authorized improvements, rather than improvement.

SECTION 47. Amends Section 57.261, Water Code, to make a conforming change.

SECTION 48. Amends Sections 57.265(c) and (d), Water Code, to make conforming changes.

SECTION 49. Amends Section 57.266(a), Water Code, to make a conforming change.

SECTION 50. Amends Sections 57.267(b), (c), and (d), Water Code, as follows:

(b) Makes a conforming change.

(c) Requires the notice to be in substantially a certain form.

(d) Requires this notice to state certain information in substance.

SECTION 51. Amends Sections 57.269(a) and (b), Water Code, to make conforming changes.

SECTION 52. Amends Sections 57.270(e), (j), and (k), Water Code, to make conforming changes.

SECTION 53. Amends Section 57.273(b), Water Code, to make conforming changes..

SECTION 54. Amends Section 57.274(b), Water Code, to make conforming changes.

SECTION 55. Amends Section 57.275(d), Water Code, to make conforming changes.

SECTION 56. Amends Section 67.010(d), Water Code, to provide that if a corporation issues bonds secured by a contract entered into under Section 402.014, Local Government Code, the corporation is considered to be acting for or on behalf of that political subdivision for the purposes of Section 1201.002(1), Government Code. Provides that a political subdivision is authorized to approve by ordinance, resolution, or order the articles of incorporation and the bylaws of a corporation that is created for the purpose of constructing facilities under a contract as provided by Section 402.014, Local Government Code.

SECTION 57. Repealer: Sections 54.0163(e), 54.508, 57.094, 57.108(a), 57.154(b), and 57.156, Water Code; Section 402.908, Local Government Code; and Subchapter C, Chapter 441, Transportation Code.

SECTION 58. (a) Provides that except as provided by this section, a provision of a strategic partnership agreement entered into before December 31, 2003, that does not comply with Section 43.0751(f)(2), Local Government Code, as amended by this Act, is not enforceable after December 31, 2003, to the extent of the noncompliance.

(b) Provides that a permit issued before December 31, 2003, by a municipality with a population of 1.9 million or more remains valid until its expiration and requires it to be recognized by the county.

(c) Prohibits a municipality with a population of 1.9 million or more from enforcing, under a strategic partnership agreement, a code provision that would otherwise require a building permit from the municipality after the effective date of this Act.

(d) Provides that this section does not affect the validity or enforceability of a provision of a strategic partnership agreement that requires services or imposes fees if the services or fees relate to emergency services that were specifically requested by the board of a municipal utility district or if the services or fees have been approved by a state agency or a political subdivision that is not a party to the strategic partnership agreement.

SECTION 59. (a) Provides that Section 43.127(a), Local Government Code, as amended by this

Act, applies to an area described by Section 43.123(e), Local Government Code, as added by this Act, that is annexed for limited purposes in connection with a strategic partnership agreement before, on, or after September 1, 2003.

(b) Provides that for the 2003 tax year, the change in law made by Section 49.236, Water Code, applies only to a conservation and reclamation district created under Section 52, Article III, or Section 59, Article XVI, Texas Constitution, and governed by Chapter 49, Water Code, that adopts its tax rate on or after September 1, 2003. Provides that for the 2003 tax year, a district that adopts its tax rate before September 1, 2003, is governed by the law as it existed prior to the effective date of this Act and that law is continued in effect for that purpose.

SECTION 60. Effective date: upon passage or September 1, 2003.